

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ANDREW H.,

Claimant,

OAH No 2006050249

Vs.

HARBOR REGIONAL CENTER,

Service Agency.

DECISION

This matter was heard by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, in Torrance, California, on June 30, 2006.

Claimant Andrew H. (Claimant) was represented by his mother and father, Connie H. and Richard H.¹

Gunnar Swanson, Program Manager, represented the Service Agency, Harbor Regional Center (HRC or Service Agency).

Evidence was received, the matter was argued, and the case was submitted for decision on June 30, 2006. The following evidence was considered by the ALJ: Service Agency's exhibits A-K; Claimant's exhibits 1-11; and the testimony of Gunnar Swanson, Conni H., Richard H., David Sponder, and Michele Duke-Sponder.

¹ An initial is used for the last name of Claimant and his family in order to protect their privacy.

ISSUE

Should HRC be required to fund a Relationship Development Intervention (RDI) assessment (RDA) for Claimant?

FACTUAL FINDINGS

1. Claimant is a 15 year old boy, having been born on March 14, 1991. He has been a consumer of HRC since approximately 2001. HRC has provided services to Claimant pursuant to the Lanterman Developmental Disabilities Services Act, Welfare & Institutions Code section 4400 *et seq.* (Lanterman Act). Claimant lives within HRC's service area with his parents. Claimant is eligible for services based on his diagnosis of autism.

2. HRC has authorized funding for Claimant to attend three weeks of full day summer camp during the summer of 2006. HRC is not presently funding any other services for Claimant. Claimant also receives services from his school in the form of speech therapy.

3. Claimant's most recent Individual/Family Service Plan (IFSP), dated March 20, 2006, states that Claimant is in grade nine at Torrance High School. In school, Claimant has difficulty staying on task. Claimant also has difficulty establishing any friendships with his classmates.

4. Claimant's parents are concerned about Claimant's social/relationship skills development. Claimant is unable to understand social cues and is unable to maintain interactions or to establish any friendships with his peers. He does not know how to maintain contact with his peers or how to engage in reciprocal interactions. Claimant will, at times, raise topics out of context and his conversation tends to revolve around his interests, such as video games. If the topic of conversation is not of interest to Claimant, he loses interest and does not participate in the conversation.

5. HRC contends that RDI is "designer therapy" and that funding experimental therapy is not therapeutically effective or cost-effective. (Welf. and Inst. Code section 4512, subd. (b)).

6. Claimant's parents contend that RDI addresses the core deficits of autism in that it improves social coordination and flexible thinking. Claimant's parents also favor the fact that the RDI methods can be implemented by them in their home. Claimant has been involved in other social skills programs. The exact type(s) of these programs was not established, but in general these programs involved a group of children being taught appropriate responses in a group setting. However, once the

group was no longer together and Claimant was alone, he was, and is, unable to utilize what he was taught in the group setting.

7. RDI was developed in the past few years by Steven E. Gutstein, Ph.D. (Gutstein), a Texas-based therapist who was looking for a way in which autistic individuals could participate in authentic emotional relationships. Gutstein's theory is essentially that most social skills programs for autistic children teach only "instrumental skills," such as making eye contact when speaking with someone or shaking hands. While useful in affording the individual the ability to use social contact as a means to an end, such skills do nothing to help create in the child an understanding of emotional connections between people. Without the addition of "relationship skills," the individual will be unable to process and adapt to the many variables of a social environment, and may remain isolated from the rest of society.

8. RDI is both a therapist and parent-based program, which utilizes a progressive order that allows new skills to build on established ones. (Claimant's Exhibit 10.) At the early levels, the child is partnered with his or her parent. As the child progresses, another child at a similar level then becomes a partner. At the higher levels both children become part of a group. Although it is not always the case, most children are started at the first stage of the first level. However, in order to determine whether a child is a suitable candidate for RDI, and if so at what level of the program the child should begin, an assessment, or RDA, is conducted.

9. The only empirical support for RDI is in the form of a study published by Gutstein in 2003. In that study, families with children who met certain criteria were asked to participate. The children had to qualify for a diagnosis of Autism, Asperger's Syndrome, or Pervasive Developmental Disorder – Not Otherwise Specified (PDD-NOS), based on the criteria of the Autism Diagnostic Observation Schedule (ADOS) or substantially similar diagnostic instrument. The subjects were then placed into two groups, those who fully pursued RDI, and those who chose another treatment modality. Ultimately, 17 subjects were in the RDI group, while 14 subjects were in the non-RDI group. The two groups had little difference in demographics; however, there was a substantial difference in the amount of "intensive behavioral therapy" the subjects in the non-RDI group underwent during the test period. The results were based on two indices: change in ADOS scores, and change in ADOS diagnostic category. These results substantially favored the RDI group, who overall demonstrated substantial improvement in ADOS scores (as compared to negligible change for the non-RDI group), and 70 percent of whom demonstrated improvement in ADOS diagnostic category (as compared to no change for the non-RDI group). Despite the seemingly impressive result, the study does concede that it is far from definitive, having been based on an extremely limited sample size, using only younger children, and not factoring in the wide variety of ways in which cognitive functioning was measured.

10. Claimant would like to have an RDA performed, and, if recommended, RDI services funded by HRC. The only issue before the ALJ is whether or not an assessment should be funded.

11. David Sponder (Sponder), a licensed education psychologist who is also certified to provide RDI, testified at hearing. Only approximately 80 people in the United States are presently certified to provide RDI, but other RDI studies are progressing and RDI is rapidly gaining in popularity as a method for treating autism. Sponder was certified as a provider of RDI after he completed over one year of training. Initially, Sponder attended a weeklong RDI training seminar in Texas. Thereafter, for approximately one year, he submitted videotapes of his sessions with clients to Texas for review. He also made follow-up visits to Texas to review his technique. Sponder has been treating children diagnosed with autism since 1981. Besides RDI, he utilizes various other methods of therapy such as applied behavior analysis and “floor time.” He finds RDI to be very effective at teaching mental flexibility and how to manage uncertainty. Sponder has met Claimant and believes that Claimant has some social deficits, but he can not state whether RDI would be appropriate for Claimant without an assessment. Claimant’s deficits are similar to other children who have been referred to him for a RDA. Sponder is vendorized at HRC, but not to provide RDI. Sponder’s testimony was given great weight by the ALJ for a number of reasons. First, he has been treating children with autism for approximately 25 years. Given his extensive experience, he is of the opinion that RDI can be very effective. Second, he utilizes treatment methods other than RDI. This is evidence that he is not merely an advocate for RDI. Third, he believes in RDI enough to have invested over a year in learning the treatment methods of RDI and becoming certified to provide RDI.

12. Three other Regional Centers have already approved vendors to provide RDI services. These Regional Centers, Alta California Regional Center, San Gabriel/Pomona Regional Center, and Westside Regional Center, are also funding RDI for some consumers.

13. HRC’s two grounds for denying Claimant’s request are that RDI is an experimental protocol lacking in sufficient empirical support, and that there is no one currently vendorized to provide such a service. As to the first ground, RDI is not merely experimental in that it is a methodology for treating autism that is growing rapidly in popularity. Also, three other Regional Centers presently fund this type of service. This is additional evidence that RDI is therapeutic and not merely experimental. As to the second ground, it was established that Sponder has been approved as a vendor by HRC, but not to provide RDI services. The only conclusion that can reasonably be drawn is that Sponder is not approved as a vendor to provide RDI services because HRC does not authorize these services and, therefore, no vendors are being approved at this time. No other evidence was presented that Sponder, or others, are not otherwise qualified to be vendors to provide RDI services.

LEGAL CONCLUSIONS

1. Pursuant to the Lanterman Act, Claimant is eligible to receive services from HRC. (Welf. and Inst. Code section 4643.5, subd. (b).) HRC is therefore obligated to provide Claimant with services consistent with the goals set forth in his IFSP, and in a manner consistent with the Lanterman Act. To do so, a regional center must analyze for Claimant “the effectiveness of each option in meeting the goals stated in the . . . plan, and the cost-effectiveness of each option.” (Welf. and Inst. Code section 4512, subd. (b).)

2. One of the goals stated in Claimant’s current IFSP involves socialization. (Service Agency Exhibit E.) As set forth on page 7 (Desired Outcome): “Andrew will maintain and develop friendship with a peer at school” and “Andrew will have the opportunity to socialize with peers during his summer break from school.” To help achieve the latter goal, HRC agreed to fund Claimant’s participation in a summer program. However, Claimant is not making any progress toward the first goal because Claimant is not presently maintaining or developing any friendships with any peers at school. At this time, although socialization remains an acknowledged IFSP goal which is not being met, Claimant is receiving no social skills services from HRC. (Factual Finding 2.)

3. Claimant wants to receive an assessment to determine whether he is a good candidate for RDI, a program dedicated to helping autistic individuals develop relationships with the rest of society. The evidence establishes that Claimant is in substantial need of this ability, and that he is the type of candidate who may benefit from RDI. (Factual Findings 3, 4, 6, 7-13.)

4. The evidence also established that RDI is still in its early stages, without much empirical support outside of one limited study conducted by its developer. One of HRC’s grounds for denial is that RDI is too experimental to be deemed effective. A service agency is entitled to rely on the empirical evidence available in determining whether a service may be deemed “effective” enough to require funding. As noted, that evidence appears to be limited to one study. However, that one study did demonstrate substantial success with subjects who were comparable to Claimant in their abilities and level of functioning. Further, three other Regional Centers are already funding RDI services which is evidence that the limited data regarding RDI is not an insurmountable obstacle to funding the service. Additionally, Sponder has personally utilized this treatment methodology and finds it effective. The totality of the evidence established that RDI can be effective and outweighs the limited empirical data available. (Factual Findings 7-13.)

5. HRC’s second ground for denial is the lack of an approved RDI vendor in Claimant’s service area. For the service agency, vendorization is an important means of identifying, selecting, and utilizing appropriate individuals and agencies in

providing services. (Welf. and Inst. Code section 4648, subd. (a)(3)(A).) Sponder is already both certified to provide RDI services and vendored by HRC, albeit to provide other services. Given this pre-existing relationship, HRC should be able to vendor Sponder, or another vendor, in order to provide an RDA for Claimant. (Factual Finding 13.)

ORDER

Within 30 days, HRC shall fund a Relationship Development Intervention assessment for Claimant Andrew H.

DATED: July ____, 2006

CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

NOTE: This is a final administrative decision pursuant to Welfare and Institutions Code section 4712.5, subdivision (b)(2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.